IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 21274 of 2007(G)

IOP 19/2003 OF THE I ADDL.SUB COURT, ERNAKULAM)

PETITIONER:

P.S.SANKAR, AGED 48 YEARS,
S/O.P.J.SUDHAKARAN NAIR, PERUMETH HOUSE,
MAKKAPUZHA P.O., PATHANAMTHITTA DISTRICT.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENT:

ALAGNANDA FARM TRUST, HILL PALACE ROAD,
TRIPUNITHURA, REPRESENTED BY THE MANAGING
TRUSTEE, SAJEEV MATHEW.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.21274 OF 2007

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Dated this the 12th day of July, 2007

JUDGMENT

This writ petition is filed seeking to set aside Ext.P3 order passed by the I Addl.Sub Judge, Ernakulam and restore I.O.P No.19 of 2003 to file. The learned Sub Judge by his order dated 11.2.2005 dismissed the indigent O.P. as "petitioner absent. I.O.P. dismissed. Pay the court fee on the plaint in 3 days. Call on 16.2.2005". Thereafter on 16.2.2005 even without converting he rejected the plaint under Order VII Rule 11 C.P.C. I think the learned Sub Judge has committed procedural irregularity. Even as per the Rules minimum time is to be given for paying the court fee and that has not been done. Further, it is submitted by the petitioner that he must be given an opportunity to prove his inability to pay the amount. Since the matter is dismissed for default, I feel an opportunity is given to him. Therefore the orders dated 11.2.2005 and 16.2.2005 are set aside and the learned I Addl.Sub Court is directed to restore IOP No.19 of 2003 back to file and

after hearing the parties concerned dispose of the matter in accordance with law.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-